1989

City of Monticello v. Lee Christensen : Brief in Opposition to Certiorari

Utah Supreme Court

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Lee Christensen; pro se.

BRIEF

IN THE UTAH SUPREME COURT

CITY OF MONTICELLO Plaintiff and Respondent, vs. LEE CHRISTENSEN, Defendant and Petitioner.	Case No. 89-0163 Priority No. 13

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

PETITION FOR CERTIORARI TO THE UTAH COURT OF APPEALS, JUDGES BENCH, DAVIDSON AND JACKSON, ON DISMISSAL OF PETITIONER'S APPEAL

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QUESTIONS PRESENTED

Petitioner Lee Christensen ("Christensen") lists six questions presented to this Court. Respondent City of Monticello (the "City") respectfully suggests that the only questions which this Court could consider if it grants certiorari are:

> 1. Did the Utah Court of Appeals properly dismiss Christensen's appeal because he had not raised the constitutionality of a statute or ordinance in the justice court?
>
> 2. Was Christensen denied his constitutional right of appeal?

CONTROLLING PROVISION

The City believes that the following statutory provision answers the questions presented:

> An appeal may be taken to the circuit court from a judgment rendered in the justice court in accordance with the provisions of this rule, except:
>
> (a) The case shall be tried anew in the circuit court and the decision of the circuit court is final except where the validity or constitutionality of a statute or ordinance is raised in the justice court.

Section 77-35-26(13)(a), Utah Code (1988).

STATEMENT OF THE CASE

Nature of the Case

Christensen was convicted after a trial before the Monticello Justice of the Peace, Honorable S. Rigby Wright, of driving a motor vehicle within the City while his license was suspended or revoked. He appealed to the Twelfth (now Seventh)

Circuit Court of San Juan County, Utah, and the matter was tried anew before Judge Bruce K. Halliday on March 31, 1988. Christensen was convicted by the Circuit Court and a Judgment and Order of Probation was entered on April 21, 1988.

Christensen then appealed to the Utah Court of Appeals. While that case was pending, he attempted an interlocutory appeal of a Circuit Court order determining he was not impecunious, petitioned the Court of Appeals for a writ of mandamus to the Circuit Court, and petitioned for rehearing on the denial, which was also denied. After the filing of briefs, the Court of Appeals granted the City's motion to dismiss the appeal in a per curiam opinion, based on Christensen's failure to raise the constitutionality or validity of a statue or ordinance in the justice court. City of Monticello v. Christensen, 769 P.2d 853 (Utah App. 1989). He petitioned for rehearing and his petition was denied on March 22, 1989. His petition for certiorari was filed and served on April 24, 1989.[1]

Statement of Facts

There is no record of the proceedings in the justice court, because the justice court is not a court of record. However, Christensen did file in the justice court a Demand for

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[1]Rule 45 of the Rules of the Utah Supreme Court, requires filing of the petition within 30 days after entry of the decision of the Court of Appeals. Those 30 days expired on April 21, 1989. The petition, pursuant to Rule 45(b), should have been refused.

Dismissal[2], which stated in full as follows:

> Comes now the defendant to demand that the charges in the above entitled case be dismissed against him.
>
> Defendant states to support motion, defendant is charged with DRIVING UNDER SUSPENSION, U.C. 41-2-28, as adopted by Ordinanc (sic) in the city of Monticello. This Code does not apply to the defendant the defendant is not a resident of the state of Utah and has not had his Utah License suspended.
>
> Furthermore, defendant has now, did have at time of citation a Valid Wyoming License (Copy of Extract enclosed)., and is a residendent (sic) of Wyoming. According to Infomation (sic), and Discovery, the prosecution is basing it's case on a letter from the Dept. of Public Safety, wherein it states that defendant's "Priveledge" (sic) is suspended. This only means that defendant may not have a Utah Driver's License until the time specified is over. Defendant has not applied for a Utah Driver's License.
>
> Therefore defendant demands dismissal of charges.

Christensen was convicted in justice court and appealed to the Twelfth (now Seventh) Circuit Court. He there filed another Demand for Dismissal, using essentially the same language as in the justice court, with addition of the following phrase:

> [S]ince the State of Utah is not empowered to suspend what the State of Wyoming has granted, the defendant demands that the charges against him be dropped.
>
> Christensen's Demand for Dismissal was denied.

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[2]Christensen also filed a Demand for Counsel of Choice, demanding he be allowed to have someone of his own choice to aid him with counsel and other functions of the trial. He did not request that counsel be appointed for him by the justice court. Christensen's sister appeared at trial with him.

Christensen has provided no record of the trial in the Circuit Court. It is clear from the briefs in the Court of Appeals that uncontested evidence was introduced at trial that Christensen's privilege to operate a motor vehicle in Utah was suspended for one year on February 5, 1987, and that Christensen drove a motor vehicle in Monticello, Utah on September 3, 1987. Christensen called no witnesses and did not testify himself. He was, however, permitted to introduce a copy of his Wyoming driving record, which showed that he had been issued a Wyoming license certificate.

Christensen introduced no evidence that he is or was a Wyoming resident. The City does not agree that his possession of a Wyoming license certificate gives rise to any presumption that he is or was a Wyoming resident.

ARGUMENT

I. THIS CASE PRESENTS NO ISSUE OF SUFFICIENT IMPORTANCE TO WARRANT CERTIORARI.

Rule 43 of the Rules of the Utah Supreme Court sets forth four guidelines for granting certiorari. Christensen has not suggested that any of these are applicable in this case. He suggests that whether a state may suspend the driving privilege of a nonresident with a valid license from another state is a case of first impression. The truth is that this issue was

resolved long ago.[3]

More importantly, that issue was not even decided by the Court of Appeals. It decided only that it lacked jurisdiction to consider the appeal because Christensen had failed to raise the validity or constitutionality of a statute or ordinance in the justice court. Christensen does not suggest that the Court of Appeals' jurisdictional decision was of sufficient gravity to warrant certiorari.

II. THE COURT OF APPEALS CORRECTLY DETERMINED ITS LACK OF JURISDICTION.

Under Section 77-35-26(13)(a), Utah Code (1988), the Court of Appeals has jurisdiction to consider appeals in criminal cases originating in justice court, only where the validity or constitutionality of a statute or ordinance was raised in justice court. It is clear that Christensen did not do so by his Demand for Dismissal filed in justice court. His Demand for Dismissal filed in Circuit Court added language asserting that the "State

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[3]Both C.J.S. and Am.Jur. 2d state that one may be convicted of driving under suspension when one's "privilege" to drive is suspended by a nonresident state, even though a valid license is in effect in the home state. District of Columbia v. Fred, 281 U.S. 49 (1930); Hendrick v. Maryland, 235 U.S. 610 (1914); See 61A C.J.S., Motor Vehicles, Section 639(2) and 7A Am.Jur. 2d, Automobiles and Highway Traffic, Section 148. See also State v. Milligan, 727 P.2d 213 (Utah 1986); People v. Matas, 200 Cal. App. 3d, 246 Cal. Rptr. 627 (1988); State v. Harkness, 189 Kan. 581, 370 P.2d 100 (1962); State v. Dalton, 13 Wash. App. 94, 533 P.2d 864 (1975); State v. Justesen, 63 Or. App. 544, 665 P.2d 380 (1983), review denied 295 Or. 846, 671 P.2d 1176 (1983). The Utah Legislature has defined license as the privilege to operate a motor vehicle. Section 41-2-102(9) Utah Code (1988).

of Utah is not empowered to suspend what the State of Wyoming has granted." He offered no reasoning for his position, only a bald statement that Utah lacks the power to suspend the right of the holder of a Wyoming license certificate to drive in Utah. Whether this lack of power is based on state or federal statutes or constitutional provisions, and if so, what those provisions are, was never stated. He never even stated which statute or ordinance was infirm.

The Court of Appeals correctly concluded that the statute challenged must be specified and the legal basis for the challenge must be presented by precise averments and legal argument, not conclusory allegations. It also correctly concluded that the challenge must at least be raised in the Circuit Court if the Court of Appeals is to conclude that it was raised in justice court. Christensen raised the issue in neither lower court.

III. CHRISTENSEN'S CONSTITUTIONAL RIGHT OF APPEAL HAS BEEN SATISFIED.

Christensen asserts that the Court of Appeals denied his right under the Utah Constitution to appeal in all criminal cases.[4] Christensen did not make this assertion before the Court of Appeals. Furthermore, Christensen had his appeal from the justice court to the Circuit Court. The Circuit Court's review

[4]Article I, Section 12, Utah Constitution.

was de novo, and could not have been more complete. Christensen's appeal right was satisfied by that appeal. Additional appeals may appropriately be restricted to avoid clogging appellate courts with cases already well considered and of relatively minor importance and to spare the City the expense of seemingly endless appeals.[5]

CONCLUSION

There is no issue here of sufficient importance to warrant granting certiorari. Christensen has had more than his share of judicial consideration in this matter. The petition should be denied.

DATED this 5th day of May, 1989.

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[5]Christensen, by the multiplication of his appeals, appears determined to render such economy illusory, at least in this case. It is to be hoped, however, that future litigants will learn a lesson from his experience.

CERTIFICATE OF MAILING

I hereby certify that I mailed four copies of the foregoing Brief In Opposition To Petition For Writ of Certiorari by first-class mail, postage prepaid, on the 5th day of May, 1989, addressed as follows:

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Brief.LC